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Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-528

FEDERAL COMMUNICATIONS COMMISSION,
Petitioner,

—v.—

PACIFICA FOUNDATION,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, THE ASSOCIATION OF AMERICAN PUBLISHERS, INC., THE CITIZENS COMMUNICATION CENTER, THE FREEDOM TO READ FOUNDATION, P.E.N. AMERICAN CENTER, AND POETS AND WRITERS, INC., *AMICI CURIAE*

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October Term, 1977

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BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, THE ASSOCIATION OF AMERICAN PUBLISHERS, INC., THE CITIZENS COMMUNICATION CENTER, THE FREEDOM TO READ FOUNDATION, P.E.N. AMERICAN CENTER, and POETS & WRITERS, INC.,
AMICI CURIAE

INTEREST OF AMICI */

Amici are six organizations whose work depends on the safeguards of freedoms of speech and press secured by the First Amendment and abridged by the Federal Communications Commission in this case.

*/ Letters of consent to the filing of this brief are being lodged with the Clerk of the Court.

The American Civil Liberties Union is a nationwide, non-partisan organization of two hundred thousand members, dedicated to defending the principles embodied in the Bill of Rights to the Constitution. For over fifty years, the ACLU has sought to preserve and strengthen the First Amendment as a bulwark against all forms of governmental censorship.

The Association of American Publishers, Inc. is the major national association for publishers of general books, textbooks and educational materials in the United States. AAP's more than 325 members include large commercial book publishers and smaller or non-profit publishers, including university presses and scholarly associations and, in the aggregate, publish a majority of all general and educational books produced in the United States. The AAP has traditionally sought to protect First Amendment rights and has opposed censorship and other attempts to limit freedom of communication.

The Citizens Communication Center is a public interest law firm specializing in communications law. CCC represents the rights of listeners before federal agencies and in federal courts.

The Freedom to Read Foundation, a non-profit organization supported by voluntary donations, was established in 1969 by the American Library Association to promote and defend First Amendment rights; to foster libraries as institutions wherein every citizen's First Amendment freedoms are fulfilled; to support the right of libraries to include in their collections and make available any work which they may legally acquire; and set legal precedent for the freedom to read on behalf of all citizens.

P.E.N. American Center, the United States chapter of International P.E.N., is a non-profit association of 1500 leading American poets, playwrights, essayists, editors, novelists and translators. One of P.E.N.'s basic goals is to promote cooperation among men and women of letters in the interest of freedom of expression everywhere. The charter of International P.E.N. affirms that P.E.N. stands for the principle of unhampered transmission of thought within each nation and between all nations, and members pledge themselves to oppose any form of suppression of freedom of expression in the country and community to which they belong.

Poets & Writers, Inc., is a non-profit corporation organized to disseminate information on the literary world to creative writers and to the public, through publications and through financial support of public readings by poets and writers of their creative works.

The interests of amici in fostering the widest diversity of artistic, literary, political, and social expression of which our nation is capable, and in protecting "uninhibited, robust, and wide-open" comment, expression, and dissent, would be critically affected, directly or indirectly, if the Commission's Order is sustained. Contrary to the Commission's view, there is only one First Amendment, and it is applicable to all forms of expression. Amici urge the Court, once again, to deny to the government the power it seeks to protect us from "indecent" language, and to reaffirm that the freedoms of speech and press are inimical to the regime of the censor, in all of its varied forms.

Questions Presented

1. May a licensed radio station be forbidden by the Federal Communications Commission to broadcast any program containing such words as "fuck" and "shit"?

2. Do the "special qualities" of broadcast communication justify government censorship of radio station WBAI's programs?

3. May the constitutional right of minors to receive broadcast communication be limited to programs which the FCC considers decent?

Preliminary Statement

In 1973, George Carlin, the comedian and social satirist, recorded a commentary on attitudes toward language and certain "filthy words" that are an integral part of it. Carlin catalogued and verbally dissected what he prophetically labelled the seven words that "you couldn's say on the public...airwaves.... The ones you definitely couldn't say." Undeniably, the message communicated by the monologue depends upon Carlin's artistic repetition and incantation of the seven words themselves, to illustrate the amusing, inconsistent and hypocritical conventions that apply to our use of the language. Certainly, no "translation" of the monologue not employing the seven words themselves could possibly convey Carlin's insight and ideas about language in as incisive or persuasive a fashion.[1/]

1/ Although it does a gross disservice to Carlin's masterful, satirical presentation for one simply to enumerate the seven words upon which the Commission fixated, the list is as follows: "fuck," "shit," "piss," "motherfucker," "cocksucker," "cunt," and "tit."

In the fall of 1973, WBAI, a listener-supported, non-profit radio staion in New York City known for a political and intellectual format intended for a limited and sophisticated segment of the listening audience, broadcast the Carlin monologue in the context of a general discussion of contemporary attitudes toward language. Mindful that, despite its serious approach toward this significant topic, use of the seven words might offend some listeners, WBAI advised those who might be offended to tune out the monologue segment of the discussion. The broadcast that ensued, however, offended one listener, who registered his complaint with the Federal Communications Commission.

As a result of this single, isolated complaint, the FCC ratified the prophetic Carlin list of seven "unmentionable" words and disciplined WBAI for having broadcast them. Entirely ignoring the serious context and purpose of WBAI's broadcast of the Carlin monologue, and without any in-depth consideration, inter alia, of the sociological, linguistic or educational implications of its ipse dixit ruling, the FCC simply characterized the seven words as per se "obnoxious, gutter language" having as their inevitable effect the "debasing and brutalizing of human

beings." It therefore held that the seven words - and presumably other "indecent" words of a similar character - may never be broadcast, at least when there is a "reasonable risk" that children "may be" in the audience. During the "late evening hours" when the number of children in the audience is "reduced to a minimum," such offensive words may "conceivably" be aired but only with a warning and at the broadcaster's peril since any words used must be found to have "serious literary, artistic, political, or scientific value." And even in the context of live coverage of a news-making event, where broadcast of "indecent" words may be unavoidable and therefore permissible, the FCC suggested that repeated news broadcast of such words may lead to disciplinary action.

Summary of Argument

Today, its order on "indecent" language having been reversed as an "unconstitutional act of censorship" by the Court of Appeals, the Commission asks this Court to sanction its attempt to censor non-obscene words, taken taken out of context, that it considers inappropriate for broadcast. In amici's view, the FCC order would impose an unprecedented form of

censorship, barred by the FCC's own statutory mandate, and entirely unconnected to the kind of grave or imminent danger of harmful conduct over which any organ of the state could purport to have jurisdiction. This arrogation by the FCC of censorial power over "offensive" language would deprive a substantial portion of the adult population of the United States of an opportunity to hear broadcasts of serious, non-obscene materials of undeniable intellectual, cultural or legitimate entertainment value. The FCC order would prevent broadcasters, who are in any event bound to use their license in the public interest, from exercising their already limited discretion freely to determine the content of their broadcasts. And, despite the FCC's cavalier assumption that it is capable of standing in loco parentis with regard to material that may be broadcast to children, the FCC order wholly fails to recognize that it would also deprive children of a significant range of materials considered appropriate and worthwhile for their education or entertainment, and of their constitutional right to receive ideas via radio.

To the extent the FCC has purported to fit its order within the category of unprotected "obscenity," by reformulating the

standards of Miller v. California, 413 U.S. 15 (1973), to give meaning to the prohibition in 18 U.S.C. 1464 of "indecent" language, its ruling conforms neither procedurally nor substantively to any "obscenity" standard ever adopted by this Court. Indeed, the FCC, in its proscription of words that "depict sexual and excretory activities in a manner patently offensive by contemporary community standards for the broadcast medium," has cut itself entirely free from the moorings of this Court's strictly circumscribed definition of the permissible reach of obscenity laws or regulations.

Thus, this Court's view of the constitutional law of obscenity - as an exception to the literal command of the First Amendment - rests upon the premise that obscenity is expression devoid of social value. Yet the FCC order purports to censor words without regard to social value. Although the law of obscenity as defined by this Court has always been concerned with the depraved or titillating appeal to "prurient interest," the FCC ban holds prurience to be entirely unnecessary to justify the censorship it deems appropriate with

regard to expression broadcast over media it licenses or regulates. Finally, although the American constitutional law of obscenity since Roth - and indeed dating back to the Ulysses case and beyond - has definitively rejected the "Hicklin" rule and has held that obscenity can be determined based only on the "predominant appeal" of the work "taken as a whole," the FCC order permits censorship of single words wholly out of context, regardless of the nature of the entire work.

Set adrift from every one of constitutional standards for determining what is obscene, the first FCC application of its new law of offensive broadcast expression has yielded the following results:

- The FCC seeks to protect unsupervised minors from material broadcast during an hour when the number of children in the audience is at a minimum and in a listening situation - an automobile - where children are by definition under the control of an adult.

- The FCC purports to be concerned with the "thrusting" of unwanted materials in a situation where the licensee gave a warning prior to the broadcast and, in any event,

where a dial-twister, unwittingly tuning in on the broadcast, could avoid further messages by a further twist of the dial, a negligible burden on the few persons who wished not to hear the message in order to protect the constitutional rights of those who with to hear the message.

- The FCC purports to censor in order to further the "larger and more effective use of radio in the public interest," yet an extensive body of highly significant literature, drama, poetry and prose intended for adults and for children which portrays the reality of the human experience, but which may contain what the FCC views as offensive words, is either banned or relegated to hours when a majority of the public is no longer in the radio (or television) audience.

These results are wholly at odds with the First Amendment jurisprudence of this Court and with the basic premises of a free society.

The FCC Order also infringes the distinct constitutional rights of minors to be free of unconstitutional censorship of messages they might wish to receive.

Finally, the Commission's actions, in imposing a prior restraint on the broadcast of "indecent" words with none of the safeguards afforded by a criminal proceeding, are without express statutory authorization and conflict with the express Congressional ban on censorship of radio.

ARGUMENT

I.

CONSTITUTIONAL GUARANTEES OF FREEDOM OF SPEECH AND PRESS DO NOT PERMIT THE FCC TO CENSOR BROADCASTING SOLELY ON THE BASIS OF THE USE OF CERTAIN WORDS TAKEN OUT OF CONTEXT.

The FCC's attempt to ban the use of seven words in George Carlin's satiric monologue is wholly at odds with this Court's First Amendment teachings. The FCC contends that its ban on "indecent" language was a limited ad hoc ruling which assertedly did not justify the broader ruling of the Court below. See, e.g., Pet. Br., 41. On the contrary, as we will first show, the FCC's order is the functional equivalent of a systematic prohibition, and required the overbreadth and vagueness scrutiny applied by the majority below.

A. The Order was Intended to Establish Broad, Nationwide, Standards for the Broadcast of "Indecent" Language.

In an attempt to rescue an ill-conceived and unprecedented Order that on its face bans Shakespeare, the Bible, and dozens of other works of undisputed serious literary and

artistic value from broadcast during most, if not all, of the broadcast day in many communities, the Commission complains that its Order "should have been reviewed as a ruling on a specific set of facts," Pet. Br., 41, and not as a broad standard governing indecent language generally applicable to the broadcast medium. However, the Commission did not confine itself to the facts before it, or rule on the Carlin monologue "as broadcast." And even if it had intended to do so, the nature of the Commission's ruling would inevitably chill protected expression. The Order should be reviewed not only as an instance of unconstitutional and statutorily unauthorized censorship of a particular message of serious literary, artistic and political value, but also as a prospective standard that will predictably affect the broadcast of protected speech and the unfettered exercise of broadcasting judgment, responsibility, and sensitivity to the needs, interests and tastes of differing listening audiences.

At the outset of the Order, the Commission referred to "an increasing number of complaints concerning the use of indecent

language on the public's airwaves," and stated:

> In this declaratory order we consider a citizen's complaint about a broadcast which contained many of the words about which the public has complained. We review the applicable legal principles and clarify the standards which will be utilized in considering the public's complaints about the broadcast of "indecent" language. Pet. App. B, 63, 64.

Emphasizing the in terrorem effect intended, the Commission set forth a general definition of "indecent" language, and concluded by justifying the broad standard embodied in the Order:

> The Commission's failure to set forth its position could lead to widespread use of indecent language on the public's airwaves, a development which would (1) critically impair broadcasting as an effective mode of expression and communication, (2) ignore the rights of unwilling recipients, and (3) ignore the danger of exposure to children. Pet. App. B, 74.

The Commission's belated effort to narrow the intended scope of its Order is inconsistent not only with the very language and scope of the Order, but also with the Commission's own approach. "In essence," the Commission

states, it has held only "that the complainant in this case was entitled to assistance." Pet. Br., at 45. But the Commission's arguments, resting on the peril of "indecent" language to unsupervised children, are inapposite to the facts of the case before it. The sole complainant was driving in a car, and presumably he was fully capable of supervising his child's listening. It is not clear why "the complainant was entitled to assistance from the Commission," when he presumably ignored WBAI's full warning as to the nature of the Carlin monologue that followed, or failed immediately to change the station once made aware of the nature of the broadcast.

Consistent with its expansive, standard-setting approach, in an Order now described as "ad hoc" (Pet. Brief at 42), the Commission failed to give any consideration to, and had no evidence before it of, factors unique to the case before it, such as the nature of the audience served by WBAI; whether the broadcast words were patently offensive to the audience served by WBAI;[2/] or whether, at

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[2/] Cf. Miller v. California, 413 U.S. 15, 30-34 (1973); Hamling v. United States, 418 U.S. 87, 103-105 (1974).

2 p.m. on a weekday the number of unsupervised children in WBAI's audience was at a minimum. [3/] Indeed, so far as the record before the Commission indicated, there were no unsupervised children exposed to the broadcast of the Carlin monologue on an FM program whose subject was "contemporary society's attitudes toward language," plainly not a topic aimed at or attractive to children.

In short, the Commission's Order was in no significant way limited to the Carlin monologue "as broadcast."

B. The "Indecent" Words Suppressed by the Commission are Not Within any of the few Categories of "Unprotected" Speech.

The communication sought to be suppressed here does not fall within any of the increasingly few categories of "unprotected" speech identified by this Court.

3/ Such evidence as is available tends to indicate that the number of children in the audience at 2 p.m. on weekdays is at a minimum, excluding the midnight-6 a.m. time period. See Brief for Amici Curiae American Broadcasting Companies, et al., p. _____, n. 7.

First, we are not dealing here with "hard-core" pornography. The Commission makes no attempt to justify its Order as a regulation of obscene speech. Nor could it. From Roth v. United States, 354 U.S. 476 (1957), through Miller v. California, 413 U.S. 15 (1973), the Court has justified its acceptance of the regulation of obscenity as outside the pale of First Amendment protection on the theory that obscenity is devoid of social value, and the Court has limited the area of permissible regulation to communications that blatantly and exclusively appeal to prurient interest. Indeed. in Miller, this Court stressed that the regulation of obscenity was permissible only because it would be so limited. Here, neither precondition for regulation exists. Rather, we have a good faith broadcast of a satirical monologue about language, presented as a serious literary and artistic offering, and appealing not at all to a prurient interest in sexual matters.

Recognizing this flaw in its argument, the Commission and the dissent below attempt to bridge the doctrinal gap by equating the regulation of what is "indecent" with this Court's decisions permitting the regulation

of what is "obscene." But precisely because the Miller theory is limited to the regulation of hard-core pornography - and the claimed social harm thought to justify its prohibition - the regulation of "indecent" speech cannot be justified as the "functional equivalent" of the Miller doctrine. Cohen v. California, 403 U.S. 15 (1971), makes clear that the asserted equivalence is doctrinal sleight-of-hand.

Similarly, Cohen also makes clear that the speech here can in no way come within the limited exception to First Amendment protection that has been recognized where "fighting words" have been uttered in a manner calculated to incite a breach of the peace. See Chaplinsky v. New Hampshire, 315 U.S. 568 (1942). The "fighting words" doctrine has been limited to direct, individual face-to-face confrontations, and, even then, has never been thought to justify prior restraint. The Commission's Order violates both limitations on the doctrine.

Accordingly, since the speech at issue here cannot be suppressed for any categorical reasons, traditional First Amendment analyses and factors must be brought into play. Judged by such criteria, the Order cannot stand.

C. The Standards Applied by the Commission are Wholly Inconsistent with Settled First Amendment Law.

The Order conflicts with settled First Amendment rules in several critical respects: (1) it uses a broad and limitless "offensiveness" standard to justify suppression of speech; (2) it purports to transpose standards and concepts from the area of obscenity regulation without any of the substantive and procedural preconditions and safeguards required for regulation of obscene material; and (3) by suppressing materials to minors, the Order denies to adults reasonable access to protected communication.

1. Offensiveness

Otherwise protected speech cannot be regulated merely because it is "offensive" to others. Carey v. Population Services International, 431 U.S. 678, 52 L.Ed.2d 675, 695 (1977) (text accompanying n. 27); Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council,425 U.S. 748 (1976); Erznoznik v. City of Jacksonville, 422 U.S. 205, 208-212 (1975); Cohen v. California, 403 U.S. 15 (1971). Last term, rebuffing New York's attempt to suppress as

to minors advertisements for contraceptive products allegedly "offensive and embarrassing to those exposed to them," the Court, in a section of the opinion reflecting the views of six Justices, observed:

> But these [qualities] are classically not justifications validating the suppression of expression protected by the First Amendment. At least where obscenity is not involved, we have consistently held that the fact that protected speech may be offensive to some does not justify its suppression. See, e.g., Cohen v. California, 403 U.S. 15 (1971).

Carey v. Population Services International, supra, 52 L.Ed.2d at 695. In Erznoznik, the Court also emphasized this principle, citing Mr. Justice Harlan's holding in Cohen that governmental power to suppress speech claimed to offend others was "dependent upon a showing that substantial privacy interests are being invaded in an essentially intolerable manner." Erznoznik, 422 U.S. at 210, citing Cohen v. California, 403 U.S. at 21 (emphasis added).

Even if such a showing could override First Amendment interests, which amici do not concede, the Commission did not consider how intolerable were the

invasions of the privacy interests supporting its Order. It had no evidence as to how "offensive" the monologue was, to how many people, and in which listening audience. The only evidence that the message was "offensive" to any audience was a single letter of complaint.

Nor can the Order be justified on the ground that it simply "channeled" "offensive" speech, but did not "suppress" it within the meaning of Carey and Cohen. As Justice Powell's pivotal concurrence in Young v. American Mini Theaters makes plain, regulation can be upheld as "channeling," if at all, only so long as it does not cause

> a significant overall curtailment of [the message]...or the opportunity to reach an audience.
> 427 U.S. 50, 78-79 (1976).

"The primary concern of the free speech guarantee," Justice Powell wrote, "is that there be full opportunity for expression in all of its varied forms to convey a desired message. Vital to this concern is the corollary that there be full opportunity for everyone to receive the message." 427 U.S. at 76 (citations omitted).

In Young, this Court found that a geographic dispersion of adult movie theaters led at most to minor inconvenience, and that

the zoning regulation at issue was "unrelated to the suppression of free expression," the Court finding minimal and incidental effect on First Amendment freedoms. Here, as the Court of Appeals found, the Commission's euphemistically-labelled "channeling" is suppression, pure and simple. By permitting works containing the proscribed words only at late night hours, if at all, the Commission ensures that there will not be "full opportunity for everyone to receive the message," Young, supra, 427 U.S. at 78-79 (Powell, J., concurring). As Judge Bazelon's concurrence observed, "Adults with normal sleeping habits will be limited to programs 'fit for children.'" Pet. App. A, 36. The Order would violate the "paramount" rights of listeners, "the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences." Red Lion Broadcasting v. F.C.C., 395 U.S. 367, 390 (1969).

2. Prurient Appeal

The Commission's indecency standard attempts to piggy-back on this Court's specific standards for the regulation of obscenity, set forth in Miller v. California,

413 U.S. 15 (1973), and its progeny. But where Miller embodied a three-part test to limit the application of state obscenity regulation to non-protected speech, the Commission has entirely disregarded two-thirds of that test (prurient appeal, serious value as a whole), and improperly applied the third part (patent offensiveness as a whole) directly to protected speech.

3. Context

The Court has insisted that governmental attempts to regulate speech look not to isolated words or passages, but to the entire work, to the context in which the words to be regulated appear. Compare, Regina v. Hicklin, L.R. 3.Q.B. 360 [1868], with United States v. Levine, 83 F.2d 156 (2d Cir. 1936) (L. Hand, J.); Roth v. United States, 354 U.S. at 489; Miller v. California, 413 U.S. at 24. The Order's creation of an index of forbidden words flouts this settled principle. By announcing that language will be deemed indecent even if it has "literary, artistic, political, or scientific value," Pet. App. 12, 71, the Commission attempts to reverse nearly fifty years of First Amendment jurisprudence. The Court rejected the Regina v.

Hicklin, test in Roth because it involved a substantial risk of restriction of language which was in fact protected by the constitutional guarantees of freedom of speech and freedom of press. See, F. Schauer, The Law of Obscenity 37 (1976). The Commission's resurrection of the Hicklin approach would produce the very evils that led to its demise. But this Court has repeatedly made it clear that, where the work as a whole is not obscene, particular words or pictures therein are entitled to full protection if they are "relevant to the theme" of the material and "rationally related" to it. Kois v. Wisconsin, 408 U.S. 229, 231-32 (1972).

The Commission cited no authorities, relied on no evidence, and gave no reasons to support its conclusion that indecent words standing alone, and regardless of context, are patently offensive or harmful in any way to minors. In direct opposition to that sort of all-encompassing approach, this Court in Erznoznik v. City of Jacksonville, 422 U.S. 205 (1975), concluded that all nudity, regardless of context, "cannot be deemed obscene even to minors." How then can the Commission declare these seven words, regardless of context, and regardless of the likely audience

of the licensee, to be unprotected by the First Amendment because young people may be in the radio audience?

The Commission has assumed, without holding any hearings or consulting any surveys, that most parents would not want their children to hear these seven words, no matter in what context they appeared. It did not consider that there are childrens' books which use some of these words and yet have won awards; or that books with such words have been recommended for young people by recognized authorities. [4/] Although the Court has stated that "in relatively narrow and well-defined circumstances," government may restrict minors' First Amendment rights, Erznoznik, supra at 213, it has also repeatedly emphasized that even with respect to regulations aimed at young people, "when a state...burdens the exercise of a fundamental right, its attempt to justify that burden...requires more than a bare assertion, based on a conceded complete absence of supporting evidence that the burden is connected to such a policy," Carey v. Population Services International, 431 U.S. 678, 696 (1977). And it has more than once insisted

4/ See Appendix.

that an "undifferentiated fear...is not enough to overcome the right to freedom of expression." Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 508 (1969); Cohen v. California, supra at 23.

4. The Impact of the Indecency Standards on Adults

Even if the Order could be justified as to minors, but see Part III, infra, it is unconstitutional because it has a drastic impact on the availability of concededly protected material to adults. The Commission failed to examine the impact of its order on adults, although it has been clear since Butler v. Michigan, 352 U.S. 380 (1957), that objectionable materials could not be kept from adults because of their potential or supposed effect on minors. That, of course, is the precise effect engineered by the Commission's Order.

The Commission apparently did not consider regulation narrowly limited to obscenity in programming especially aimed at children, even if such a distinction were constitutionally permissible. In the

absence of record support for the unlikely assumption that its Order was the least restrictive regulation that would have served its purposes, the Order plainly falls within the proscription of Butler. See also Erznoznik v. City of Jacksonville, supra.

II.

RADIO'S "SPECIAL QUALITIES" DO NOT JUSTIFY GOVERNMENT CENSORSHIP OF A RADIO STATION'S PROGRAM.

The FCC declaratory order is an act of censorship. Its specific purpose and effect is to prevent radio station WBAI from broadcasting the condemned Carlin material, or any program containing the condemned words, in the future; its general purpose and effect is to prevent all radio and television stations from disseminating programs with ideas communicated by particular "indecent" words. This Court has recognized that forbidding the public expression of particular words risks "suppressing ideas in the process." Cohen v. California, 403 U.S. 15, 26 (1971).

In Cohen, a person had been convicted of "offensive conduct" for appearing in a courthouse corridor, where "there were women and children present," 403 U.S. at 16 (emphasis added), wearing a jacket bearing the

plainly visible words "fuck the draft." The Court reversed Cohen's conviction, holding that the attempted suppression of the message communicated by those words violated freedom of expression, notwithstanding the facially "indecent," or "offensive," character of the language involved. Like "much linguistic expression, [the word] served a dual communicative function;" it conveyed "not only ideas capable of relatively precise detached explication, but otherwise inexpressible emotions as well." As Mr. Justice Harlan's sensitive opinion for the Court pointed out, the Constitution protects the "emotive function," as well as the "cognitive content," of language. Cohen v. California, supra at 26. It was held impermissible for government to seek to "remove this offensive word from the public vocabulary."

Even in situations where such "indecent" language has been used by persons to express emotive insults arguably empty of cognitive content, this Court has held them to be protected. See, Gooding v. Wilson, 405 U.S. 518 (1972) ("You son of a bitch"), Rosenfield v. New Jersey, 408 U.S. 901 (1972) ("Mother fucker"), Lewis v. New Orleans, 408 U.S. 913 (1972) ("goddam mother fuckin' police"),

Brown v. Oklahoma, 408 U.S. 914 (1972) ("Mother fucking fascist pig cops"), Eaton v. City of Tulsa, 415 U.S. 697 (1974) ("chickenshit"), and Papish v. University of Missouri Curators, 410 U.S. 667 (1973) ("Motherfucker Acquitted").

Significantly, the FCC did not dispute WBAI's claim that the "indecent" words used by Carlin, and aired by the station, were "natural and contributed to the discussion and understanding" of society's attitudes toward language (Pet. App. B, 65-66). It viewed such language as "garbage" however broadcast, and banned "indecent" words from daytime or evening broadcasting regardless of their cognitive content, emotive function, or social significance. The Commission must have recognized that its declaratory order, proscribing the broadcast of the interdicted language, effectively would eliminate not only the Carlin monologue, but many other comic and dramatic words from the air. 5/

The Commission defended its action on the ground that radio has "unique qualities," and "its own peculiar problems," which

5/ See Appendix. See also the Opinion of Judge Tamm below, Pet. App. A. 15.

justify such regulation and permit "special treatment." The Commission identified four qualities of radio to justify its Order: (1) many children have unsupervised access to radios; (2) radio receivers are in the home where people's privacy interest deserves extra deference; (3) persons may unwittingly "tune in" a station without knowledge that offensive language is being, or will be, broadcast; (4) the government must apportion the scarce broadcast spectrum space "in the public interest." As we show below, none of these attributes of radio speech requires or justifies FCC censorship.

1. Unsupervised Listening by Children

The FCC states: "Obnoxious gutter language has the effect of debasing and brutalizing human beings," and "such words have no place on radio when children are in the audience" (Pet. App. B., 71), and "children have access to radios and in many cases are unsupervised by parents." (Pet. for Cert., 11). But the fact that children have supervised or unsupervised access to radios does not mean that the FCC may, constitutionally, superintend that access. First, under

Ginsberg v. New York, 390 U.S. 629 (1968), the monologue is not obscene as to minors - and accordingly is entitled to First Amendment protection - because, inter alia, it does not appeal to the prurient interest of minors. See generally Part III infra.

But even assuming, arguendo, that Congress has power constitutionally to curtail the freedom of minor persons to express or receive non-obscene information and ideas, Congress has never authorized the Commission to undertake such curtailment. Congress has not sought to place the Commission in loco parentis with regard to the radio programs to which children may listen. And if, as the Commissions claims, "broadcasters have a special responsibility to children," (Pet. Brief, 26), that responsibility, under the Communications Act, and the Constitution, is to be carried out by the broadcasters themselves, and not by the FCC.

Broadcasting is not the only type of communication to which minor persons have access in some degree unsupervised by parents or government officials. Minors have similar access to phonograph records, plays, movies, newspapers and magazines, libraries, book-

stores, museums, and galleries. Access to messages in each of these media is relatively inexpensive and well within the financial reach of most minors. Nor is radio different from other media in terms of adult control of juvenile access. The persons in charge of the mentioned media may, or may not, seek to limit the access of minor persons to messages offered. Even where legislatures have sought to limit the access of minors to communicative material, this Court has required that the obligation be arranged through measures which respect the rights to freedom of expression of the children and adults affected, adhere to constitutional requirements of "narrowly drawn, reasonable and definitive standards" for the officials to follow, and avoid any censorship of content. Butler v. Michigan, 352 U.S. 380 (1957); Ginsberg v. New York, 390 U.S. 629 (1968); Interstate Circuit, Inc. v. City of Dallas, 390 U.S. 676 (1968).

2. The Privacy of Home Radio

Broadcast communication is said by the Commission to be unique, and to warrant government censorship of serious programs such as "Lunchpail," because it is inherently "intrusive" to the home. But radio is not

intrusive in a constitutionally meaningful sense. It is unlike, for example, both loudspeakers in public mass transit vehicles, see Public Utilities Commission v. Pollak, 343 U.S. 451, 468 (1952) (Douglas, J., dissenting), and "loud and raucous" sound trucks, see Kovacs v. Cooper, 336 U.S. 77 (1949). See also Martin v. City of Struthers, 319 U.S. 141 (1943). There was practically "no escape" from the media in Kovacs and Pollak. But there is a simple escape from radio and television: "The radio can be turned off...." Packer Corp. v. Utah, 285 U.S. 105, 110 (1932) (Brandeis, J.).

The government relies heavily on Rowan v. United States Post Office Department, 397 U.S. 728 (1970), where this Court upheld a federal law empowering householders, not government officials, to prohibit unwanted mail from entering the home. The Court there said: "a mailer's right to communicate must stop at the mailbox of an unreceptive addressee," and that "a sufficient measure of individual autonomy must survive to permit every householder to exercise control over unwanted mail." 397 U.S. 736-37. But these propositions support WBAI's, not the FCC's, position. As the Chief Justice's opinion pointed out, Congress, in giving householders

the power to exclude unwanted mail messages, sought to avoid constitutional questions which would have arisen had Congress vested "the power to make any discretionary evaluation of the material in a governmental official." Id. at 737. Compare Blount v. Rizzi, 400 U.S. 410 (1971), where the Court applied the full panoply of procedural First Amendment protections in striking down governmentally compelled exclusion of mail messages to householders. To cede to the FCC the power it seeks to exclude from the air programs containing indecent language would place in the hands of government officials effective power to make discretionary evaluation of the program material which will be received into the home. Listeners have no real choice where the government, having already "cleaned up" the airwaves, leaves them no alternatives to choose from. Here, again, Mr. Justice Harlan foresaw the danger in Cohen: "[W]hile the particular four-letter word being litigated here is perhaps more distasteful than others of its genre, it is nevertheless often true that one man's vulgarity is another's lyric. Indeed, we think it is largely because governmental officials cannot make principled distinctions in this area that the Constitution leaves matters of taste and style so largely to the individual." 403 U.S. at 25.

3. The Dial-Turning Problem

According to the FCC, radio is unique because people may unwittingly tune in offensive material or an unwanted station. "Millions daily turn the dial from station to station. While particular stations or programs are oriented to specific audiences, the fact [is] that by its very nature thousands of others not within the 'intended' audience may also see or hear portions of the broadcast.... While many have loyalty to a particular station or stations, many others engage in the electronic smorgasbord sampling." (Pet. App. B., 68, 69). But a person may also unwittingly spot a story or a photograph in a daily newspaper, or weekly magazine, that they may consider indecent, upsetting, offensive, or revolting. Children as well as adults may unwittingly encounter unwanted images of human nudity flashed on drive-in motion-picture screens, visible from the streets and other public areas. Erznoznik v. City of Jacksonville, 422 U.S. 205 (1975). So, too, live and motion picture theaters regularly entertain children as well as adults who unwittingly see images, and unwittingly hear words they would prefer not to see or hear, including the "indecent"

words proscribed by the Order. See Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546 (1975). Under the Commission's Order, the program messages of stations, such as WBAI, that appeal to persons with tastes and interests not shared by most persons would be eliminated from the broadcast spectrum to protect the dial-turning mass audiences. 6/ A chance, brief exposure to an unwanted communication is a small and necessary price for listeners to pay in order for society to enjoy freedom and diversity in broadcasting.

4. Scarce Airwaves

The scarcity of spectrum space does not support the government's claim that broadcasting is uniquely subject to governmental censorship. WBAI is a non-commercial, non-profit station. Its program choices, including "Lunchpail," are listener-supported. It is one of the few non-commercial, listener-supported stations licensed to serve the audience interested in creative, provocative,

6/ It is commonplace, and worth noting, that the broadcast media show far less political and artistic diversity than do the print media.

and innovative broadcast programs. The public interest in radio broadcasting which the FCC is instructed to oversee is disserved by the Order, which tends to eliminate from the airwaves programs that serve the public interest precisely because they are not bland and inoffensive. As the FCC itself testified, in granting WBAI's license renewal applications in 1964: "We recognize that provocative programming as here involved may offend some listeners. But this does not mean that those offended have the right through the Commission's licensing power, to rule such programming off the airwaves. Were this the case, only the wholly inoffensive, the bland could gain access to the radio microphone or TV camera." Pet. Br., at 9.

III.

MINORS HAVE A CONSTITUTIONAL RIGHT TO LISTEN TO RADIO FREE OF FCC CENSORSHIP.

In Tinker v. Des Moines Independent Community School District, supra, this Court recognized that minors are "persons" under the Constitution, and "possessed of fundamental rights which the State must respect." 393 U.S. at 511. See also West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943). In the absence of "a specific showing of constitutionally valid reasons to regulate their speech," children are entitled, like adults, to freedom of expression. Tinker supra, 393 U.S. at 511. Although this Court has suggested in Prince v. Massachusetts, 321 U.S. 158 (1944), that "[t]he state's authority over children's activities is broader than over like actions of adults," the regulation upheld there concerned child employment, not the access of minors to the media. Moreover, in holding that children could be protected from serious documented dangers, the Court emphasized that they ought not be protected from their own development as adults. "A democratic society rests, for its continuance,

upon the healthy, well-rounded growth of young people into full maturity as citizens, with all that implies." Prince v. Massachusetts, 321 U.S. at 168.

Increasingly, this Court has come to protect the rights of minors in both civil and criminal contexts. See Goss v. Lopez, 419 U.S. 565 (1975); Breed v. Jones, 421 U.S. 519 (1975); In re Gault, 387 U.S. 1 (1967). And, in Carey v. Population Services International, 431 U.S. 678 (1977), the Court held that minors have constitutional rights of privacy and expression precluding the government from suppressing their access to information about contraceptives, and from conditioning their access to contraceptives upon parental consent, much as their right to terminate pregnancies could not be conditioned on such consent. See Planned Parenthood v. Danforth, 428 U.S. 52 (1976). This Court should guard against the facile assumption, characteristic of paternalistic abrogation of rights, that minor persons are incapable of regulating their own access to images and ideas. Even if it be assumed, arguendo, with the concurring opinion of Mr. Justice Stewart in Ginsberg v. New York, 390 U.S. at 649-50,

that "at least in some precisely defined areas, a child - like someone in a captive audience - is not possessed of that full capacity for individual choice which is the presupposition of First Amendment guarantees," the attempted censorship of "indecent" or "inappropriate" radio and television programs by the FCC, is not such a "precisely defined area." 7/

Three reasons support this argument.

First, the monologue that the FCC here "held" indecent and unfit for minors is freely available to them at phonograph record stores throughout the nation. Nor is this the only popular work containing the proscribed words to which children have access. See Appendix. The words deemed by the FCC to be unsuitable for young persons are words with which most young persons are familiar. They are part of the country's common linguistic culture - as the transcribed version of the Carlin record itself plainly demonstrates. Pet. App. B. 74. To deny young persons access to the messages

7/ A study made for the President's Commission on Obscenity and Pornography indicated that four of five adolescents were familiar with such words. See Vol. IX, Technical Report, at pages 273-311 ("Exposure of Adolescents To Erotic Materials").

which "indecent" words communicate in our culture, and its many and diverse subcultures - because they are "indecent," i.e., taboo - is to deny young persons that access to our culture which they presumably require to become adult persons. Where the denial is a denial of access to words and messages, it amounts also to a denial of First Amendment rights, for freedom of speech includes the right to receive ideas. Red Lion Broadcasting Co. v. F.C.C., 395 U.S. 367 (1969); Martin v. City of Struthers, 319 U.S. 141 (1943); Lamont v. Postmaster General, 381 U.S. 301 (1965); Bigelow v. Virginia, 421 U.S. 809 (1975).

Second, although the Court has held that government may "adjust the definition of obscenity to social realities by permitting the appeal of this type of material to be assessed in terms of the sexual interests... of such minors," Ginsberg v. New York, 390 U.S. 629, 638 (1968), a finding of obscenity is still required to justify suppression of speech as to minors. As a leading commentator has noted in summarizing the Court's juvenile obscenity cases:

> if material does not meet each of the three tests, it may not be prohibited, even for minors...

> Unless a film or publication has prurient interest to minors, is patently offensive when distributed to minors, and lacks serious literary, artistic, scientific, or political value for minors, it is still protected by the First Amendment. Thus, Ginsberg does not allow the definition of obscenity, even for minors, to include standard art objects, great literature, or mere nudity in any context.

F. Schauer, The Law of Obscenity, 89 (1976). The Commission's indecency standard makes no reference to the prurient appeal of the monologue to minors. Indeed, there was no prurient appeal, as the Commission concedes. Pet. App. B, 71. Accordingly, it is plain, even under the variable obscenity test of Ginsberg, that the monologue was protected as to minors.

Third, even if government has greater power to regulate commercial speech directed at children than other protected speech directed at children, see Carey v. Population Services International, supra, 52 L.Ed. at 702, n. 6 (Powell, J., concurring), the monologue was not directed at children, and it is in no sense commercial speech or advertising.

To the contrary, the monologue was broadcast on a non-profit, listener-supported station as part of a serious discussion, and it is entitled to full First Amendment protections.

Finally, amici submit that any assumption that speech otherwise protected as to minors loses some of that protection because it is disseminated on the electronic media must be rejected. The special treatment of broadcasting in the Court's decisions has been based solely on a condition of scarcity, and not at all on any presumed special communicative effect. Red Lion Broadcasting Co. v. F.C.C., 395 U.S. 367, 387-401 (1969). Cf. Kovacs v. Cooper, 336 U.S. 77 (1949).

IV.

THE FCC DOES NOT HAVE STATUTORY AUTHORITY FOR THE ACTIONS TAKEN IN THIS CASE.

Congress has expressly witheld from the FCC "the power of censorship" and has expressly prohibited the FCC from interfering "with the right of free speech by means of radio communication." 47 U.S.C. §326.

Despite the express denial of authority to censor, the FCC claims it has authority to censor pursuant to 18 U.S.C. §1464, which authorizes criminal prosecution for the utterance of any "obscene, indecent, or profane language by means of radio communication."

There is a substantial difference, as Congress recognized, between administrative censorship, which is a prior restraint, and subsequent criminal punishment, with all of its constitutional safeguards. In fact, §§ 1464 and 326 were initially enacted as part of the same statute (38 Stat. 1091, June 19, 1934, c. 652; see Pet. Brief, p. 5). It is true that Congress has given the FCC the authority to "revoke any station's license...for violation of section...1464" (47 U.S.C. §312(a)(6), but the FCC has not taken such action in this case. It is also true that Congress has given the FCC the authority to issue a "cease and desist" order to any person who "has violated or failed to observe...section...1464" (47 U.S.C. §312(b)(6)), but the FCC has not taken that action in this case either.

In short, the "declaratory order" issued by the FCC is not authorized by §312, and is

in excess of the FCC's statutory authority under §312. Instead, the FCC relies on its general authority under 47 U.S.C. §303(g) to "encourage the larger and more effective use of radio in the public interest." But that general authority does not mention or refer to §1464, as does the more specific authority of §312. The general authority conferred by §303 is expressly limited by the first section of §303: "Except as otherwise provided in this chapter...." The FCC's claimed general authority under §303(g) to rely upon §1464 conflicts with the more specific authority covering §1464 contained in §312 and, if granted, would render §312 unnecessary. Obviously, the more specific (and more limited) authority conferred by Congress should control. In addition, the general authority claimed under §303(g) would conflict with the specific prohibitions of FCC censorship contained in §326.

Furthermore, even if the FCC does have authority to issue orders other than revocations or cease and desist orders for "violation" of §1464, it can do so only when an actual violation has been proved in a criminal prosecution.

FCC v. American Broadcasting Co., 347 U.S. 284 (1954), does not require a contrary result. That case involved the construction of §1304, not §1464. Further, the Court noted that the FCC could act pursuant to §1304 only if the conduct to be regulated was "unlawful" or "illegal" under §1304. There has been no finding, in any criminal proceeding, that the seven words at issue here violate §1464.

The FCC is attempting to impose a prior restraint on speech without any of the protection afforded by a criminal prosecution and in the absence of explicit statutory authority to do so. Since the Order interferes with core First Amendment interests, and does so with no clear, apparent statutory authority, this Court could uphold the ruling below on this ground alone.

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

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APPENDIX

A Selection of Significant Materials From Other Media Containing Language Banned by the FCC

Introduction

The FCC failed to consider the impact of its order on the broadcast of significant, non-obscene works. As Judge Tamm noted below, the FCC's action would "proscribe the uncensored broadcast of many of the great works of literature including Shakespearian plays and contemporary plays which have won critical acclaim, the works of renowned classical and contemporary poets and writers, and passages from the Bible." (Pet. App. A. 14-15).

What follows is simply a selection - not intended to be exhaustive - of contemporary works of prose, poetry, drama, music and children's literature, works that have been widely recognized as materials of significant cultural or educational importance but that, because they contain one or more of the banned words, could not be broadcast under the FCC order.

The list in Appendix 1, which is limited to a selection of recent, contemporary literature, includes in the prose category, inter

alia, four Nobel prize winners, three Pulitzer prize winners and seven National Book Award winners; in poetry, one Nobel prize (overlapping the fiction category), four Pulitzers, five National Book Awards, and two Bollinger Prizes; in drama, seven New York Drama Critics Awards, seven "Tony" Awards, three Pulitzer prizes.

Ths list in Appendix 2, which is limited to a selection of recent literature intended for a children's or young adults' audience, includes one recent winner of a prestigious Newbery Honor Award for children's literature, several books on the American Library Association's Young Adult Services Division's 1977 list of "Best Books for Young Adults" and a number of books recommended for young readers by groups such as the New York Public Library and The National Council of Teachers of English (elementary English recommendation).

The unfortunate impact of the FCC order may not be surprising with regard to the works of general literature catalogued in Appendix 1, although even the selected list

indicates the massive and overbroad effect of the Commission's order on the broadcast of material already accepted in other media. In addition, of course, many original works created specially for broadcast would also have to be censored, regardless of their value or their intended audience or the importance of strong language to the expression of the message they wish to convey, if the FCC's order were upheld.

More interesting, perhaps, is the significant list of literature recognized and recommended for children and young adults (catalogued in Appendix 2) which falls afoul of the FCC ban. This selected list powerfully demonstrates the empirical and philosophical bankruptcy of a ruling premised upon so fundamentally erroneous a view regarding the relation between language and the psychological or educational needs of children. Literature of significant value to children could well contain the banned words without doing harm to children in any way.

It should be noted that the process of isolating such words in literature does violence to the work of art as a whole and is inimical to amici. But this is the

inevitable result of the Commission's order which would ban these works from being broadcast unless the "indecent" words were deleted, and it is for the limited purpose of demonstrating the impermissible effect of the Order tha amici have compiled the selected listings that follow.

With so many media of electronic broadcast in operation or being developed, and in light of the obvious, yet not fully tapped, potential of broadcasting to enlighten and entertain, amici find it difficult to believe that Congress has required, or that the Constitution permits, the censorship or exclusion from broadcast in the guise of FCC licensure or regulation of so much material of true value to adults and to children. As Judge Bazelon concluded in his concurring opinion below, "The impact of television and radio has grown at an astonishing rate, and broadcasting promises to become by far the most influential medium of communication in our society. As its power continues to grow, preservation of free speech will hinge largely on zealously protecting broadcasting from censorship." (Pet. App. A. 41).

I - General Literature

(a) Prose

1. Saul Bellow
   MR. SAMMLER'S PLANET (Viking. 1970)
   Nobel Prize for Literature, 1976
   Pulitzer Prize for Literature, 1976
   National Book Award, 1971

2. Samuel Beckett
   MOLLOY (Grove, 1955)
   Nobel Prize for Literature, 1969

3. Heinrich Boll
   GROUP PORTRAIT WITH LADY (Avon, 1974)
   Nobel Prize for Literature, 1972

4. Patrick White
   RIDERS IN THE CHARIOT (Viking, 1961)
   Nobel Prize for Literature, 1973

5. Bernard Malamud
   THE FIXER (Farrar, Straus & Giroux, 1966)
   Pulitzer Prize for Literature, 1967
   National Book Award, 1967

6. Norman Mailer
   THE ARMIES OF THE NIGHT (Signet, 1968)
   Pulitzer Prize for Literature, 1969
   National Book Award, 1969

7. Thomas Pynchon
   GRAVITY'S RAINBOW (Viking, 1973)
   National Book Award, 1974

8. John Barth
   CHIMERA (Random House, 1972)
   National Book Award, 1973

9. John Cheever
FALCONER (Knopf, 1977)
National Book Critics Circle Award nominee, 1977

10. Toni Morrison
SONG OF SOLOMON (Knopf, 1977)
National Book Critics Circle Award, 1977

11. William Gaddis
JR (Knopf, 1975)
National Book Award, 1976

12. Walker Percy
THE LAST GENTLEMAN (Farrar, Straus & Giroux, 1966)
National Book Award nominee, 1967

13. William Styron
CONFESSIONS OF NAT TURNER (Random House, 1967)
National Book Award nominee, 1968

14. Renata Adler
SPEEDBOAT (Random House, 1976)
National Book Critics Circle Award nominee, 1976
P.E.N. Ernest Hemingway Award for Best First Book of Fiction, 1976

15. Wallace Stegner
THE SPECTATOR BIRD (Doubleday, 1976)
National Book Award, 1977

16. John Updike
RABBIT REDUX (Knopf, 1971)
National Book Award nominee, 1972

(b) Poetry

1. Robert Penn Warren
SELECTED POEMS, 1923-1975
(Random House, 1976)
Pulitzer Prize, 1957
Bollinger Prize for Poetry, 1967
National Medal for Literature, 1970

2. James Merrill
BRAVING THE ELEMENTS (Atheneum, 1973)
Pulitzer Prize, 1977
Bollingen Prize for Poetry, 1972
National Book Award, 1967
National Book Award nominee, 1973

3. Gary Snyder
TURTLE ISLAND (New Directions, 1974)
Pulitzer Prize, 1977

4. John Ashbery
SELF-PORTRAIT IN A CONVEX MIRROR
(Viking, 1975)
Pulitzer Prize, 1976
National Book Award, 1976

5. John Berryman
DREAM SONGS (Farrar, Straus & Giroux, 1969)
National Book Award, 1969

6. Allen Ginsberg
THE FALL OF AMERICA (City Lights, 1972)
National Book Award, 1974

7. Frank O'Hara
THE COLLECTED POEMS OF FRANK O'HARA
(Knopf, 1972)
National Book Award, 1972

8. Samuel Beckett
COLLECTED POEMS IN ENGLISH & FRENCH
(Grove, 1977)
Nobel Prize for Literature, 1969

(c) Drama

1. Joseph A. Walker
THE RIVER NIGER (Hill and Wang, 1973)
Best Play, Tony Award (1973
Best Play on Off Broadway (OBIE), 1973

2. Miguel Pinero
SHORT EYES (Hill and Want, 1974)
Best Play on Off Broadway
Best Play, New York Drama Critics'
Circle

3. Jason Miller
THAT CHAMPIONSHIP SEASON (Atheneum,
1972)
Best Play, Tony Award
Pulitzer Prize
Best Play, New York Drama Critic's
Circle, 1972

4. Lanford Wilson
THE HOT L BALTIMORE (Dodd, Mead, and
Co., 1973)
Best Play on Off Broadway (OBIE)
New York Drama Critic's Circle Award

5. David Storey
THE CHANGING ROOM (Random House, 1972)
Best Play, New York Drama Critic's
Circle Award

6. Simon Gray
BUTLEY (Viking Press, 1971)
Tony Awards

7. David Rabe
STICKS AND BONES (Dodd, Mead & Co.,
1972)
Tony Award

8. Brendan Behan
BORSTAL BOY (Knopf, 1959)
Best Play, Tony Award
Best Play, New York Drama
Critic'sircle Award

9. Charles Gordone
NO PLACE TO BE SOMEBODY
(Dodd, Mead & Co., 1969)
Pulitzer Prize

10. Howard Sackler
THE GREAT WHITE HOPE (Dial Press, 1968)
Best Play, Tony Awards
Best Play, New York Critics'
Circle Award
Pulitzer Prize

II - Childrens and Young Adults Literature

1. Don Bredes
HARD FEELINGS (Atheneum, 1977)
ALA Best Books for Young Adults, 1977
Wallace Stengner Fellowship Winner

2. Robin F. Brancato
WINNING (Knopf, 1977)
ALA Best Books for Young Adults, 1977

3. Robert Cormier
I AM THE CHEESE (Pantheon, 1974)
ALA Best Books for Young Adults, 1977

4. Kurt Vonnegut, Jr.
SLAUGHTERHOUSE FIVE (Dell, 1968)
National Book Award nominee, 1970
New York Public Library Outstanding Fiction List for Young Adults, 1976

5. Kin Platt
HEADMAN (Dell, 1977)
ALA Best Book for Young Adults
Elementary English recommendation (Nat'l Council of Teachers of English)

6. Rosa Guy
RUBY (Viking, 1976)
ALA Best Book for Young Adults

7. Richard Peck
THE GHOST BELONGED TO ME (Viking, 1975)
ALA Best Book ror Young Adults, 1977

8. Ken Kesey
ONE FLEW OVER THE CUCKOO'S NEST (Viking, 1962)
New York Library Outstanding Fiction for Young Adults, 1976

9. Alice Childress
A HERO AIN'T NOTHIN BUT A SANDWICH (Coward, McCann, 1973)
National Book Award (childrens books) nominee, 1974

10. Joanna Reis
THE UPSTAIRS ROOM (Crowell, 1972)
Newbery Honor Award
Charles & Bertie G. Schwartz Award, 1972 (Nat'l Jewish Book Council)

11. John Donovan
WILD IN THE WORLD
National Book Award (childrens books) nominee, 1972